



# UNITED STATES PATENT AND TRADEMARK OFFICE

*eeu*  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,476	07/17/2003	Alfred Stirnemann	35624	2892
116 7590 09/10/2007 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			EXAMINER BHAT, ADITYA S	
			ART UNIT 2863	PAPER NUMBER
			MAIL DATE 09/10/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/621,476

Applicant(s)

STIRNEMANN, ALFRED

Examiner

Aditya S. Bhat

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-15, 18-23, 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 17, 24 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 24 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Jenkins et al. (USPN 5,919,143).

With regards to claim 17, Jenkins et al. (USPN 5,919,143) teaches an apparatus for the determination of an acoustic impedance comprising:

- a probe (col. 6, line 57) having a housing (200)
- a microphone, (28; figure 1)
- a speaker (col. 7, line 36)
- an adapter arranged in an unlockable fashion with said housing (figure 6) and
- an acoustic resistor (310; col. 7, line 35) wherein said microphone (312; figure 8) is connected to said speaker via a channel, (Col. 7, lines 35-40) and wherein said channel has an exit opening (below 308; figure 8) with said acoustic resistor (310; figure 8) between said speaker (312; figure 8) and said exit opening, wherein a connecting channel is built up within the probe between the speaker and the microphone leading subsequently to the microphone into an adapter, (figure 8) which is arranged in an unlockable fashion with a housing (200; col. 6, line 57) of the probe.

With regards to claim 24 and 27, Jenkins et al. (USPN 5,919,143) teaches an apparatus and method for the determination of an acoustic impedance comprising:

- a probe, (col. 6, line 57) having housing (200),
- a microphone, (28; figure 1)
- a speaker, (col. 7, line 36) and
- a acoustic resistor, (310; col. 7, line 35) wherein said microphone (312; figure 8) connected to said speaker via a channel, (Col. 7, lines 35-40) and wherein said channel has an exit opening (below 308; figure 8) with said acoustic resistor (310; figure 8) between said speaker (312; figure 8) and said exit opening, said apparatus providing an output for determining the impedances in the field of quality control of one or more of: hearing device transducers, porous bodies, membranes, and textiles. (figure 2-3)

***Allowable Subject Matter***

The following is an examiner's statement of reasons for allowance:

With regards to 1-15, 18-23 & 25-26 please see office action mailed on 6/15/2006.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Arguments***

Applicant's arguments filed 6/22/2007 have been fully considered but they are not persuasive.

During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

While the meaning of claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allowed. This means that the

words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

It should be noted that the Merriam Webster online dictionary defines probe as any of various testing devices or substances and an adapter as a device for connecting two parts of an apparatus.

In this instance applicant argues that the prior art of record does not teach a probe (thermometer; col. 6, line 57) having housing (200), a adapter arranged in an unlockable fashion with said housing (connection b/w 206& 208; fig 6), and Jenkins reference does not provide any suggestion that the device taught by Jenkins could be used to determining impedances. (Col. 4, lines 45-55)

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kraus et al. (USPN 6,358,216) teaches a apparatus for taking measurements in the ear.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 2863


extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aditya S. Bhat whose telephone number is 571-272-2270. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Aditya Bhat  
August 29, 2007

  
John Barlow  
Supervisory Patent Examiner  
Technology Center 2800